

SUMMARY OF RESPONSE

Respondent denied discriminating against Complainant for any unlawful reason including race. Respondents asserted they did not rent the apartment to Complainants because Complainants did not provide them with the information that they requested to complete the rental process.

BACKGROUND

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

Complainants are an engaged couple who were seeking rental housing.

Respondents own two buildings, located at 236 and 238 Harrison Avenue in Lodi, New Jersey. Together, the buildings contain a commercial bakery and eight rental apartments.

SUMMARY OF INVESTIGATION

The investigation revealed sufficient evidence to support a reasonable suspicion that Complainants were subjected to unlawful discrimination when Respondents refused to rent them an available apartment.

The investigation revealed that on November 10, 2008, Respondent Carmelo Luciano showed Complainants a one-bedroom apartment, which was available for rent. There was no dispute that Respondent Carmelo Luciano accepted from Complainants a check for \$750 as a deposit to hold the apartment. During an interview with the Division's investigator, Complainants indicated that Respondent Carmelo Luciano told them that they could move into the apartment on November 16, 2008. Complainants said that they agreed to give Respondent Carmelo Luciano an additional \$750 on that date for the first month's rent. Complainants said that on November 16, they returned to the apartment with a van full of belongings and extended family on hand to help them move in. They alleged that Respondent Carmelo Luciano met them at the property, returned their deposit, and told them that his wife, Respondent Rosa Luciano, had rented the apartment to someone else.

The investigation disclosed that Complainants immediately suspected that Respondent had discriminated against them because they were an interracial couple. Shortly after they were denied the apartment, Complainants visited the Fair Housing Council of Northern New Jersey (Fair Housing Council) and made a complaint that Respondents refused to rent to them because of race.¹

¹ The Fair Housing Council is a non-profit corporation located in Hackensack, Bergen County, New Jersey. One of the Fair Housing Council's goals is to promote equal opportunity in the rental of housing. To that end, it assists its clients in finding housing and conducts tests of housing facilities. Lee Porter

Fair Housing Council conducted telephone and in-person tests at Respondent's property on November 18, 22, 23 and 24, 2008, to determine if it could corroborate the Complainants' allegations. Following completion of the tests, the Fair Housing Council, along with Lee Porter, filed a complaint on their own behalf with the U.S. Department of Housing and Urban Development (HUD) and assisted Complainants in filing a complaint of their own. HUD subsequently referred both complaints to the Division pursuant to its worksharing agreement with the Division.

During the investigation, the Fair Housing Council submitted copies of its test reports. The reports indicate that on November 18, 2008, a white male and white female tester contacted Respondents by telephone to inquire about the apartment. According to the reports, both testers were told the apartment was still available and both were given appointments to see it on November 22, 2008. The test reports further indicate that on November 22, 2008, the white male tester arrived at the property at his scheduled time and was shown the apartment by Respondent Carmelo Luciano. The white female tester indicated in her report that she arrived at the property at her appointed time, which was less than two hours after the white male tester left the property, and was accompanied by a black male tester posing as her husband. According to the test report, no one was there to meet them. The report indicated that the testers walked around the property and were told by a man there to try the office next door. The testers reported that after no one answered the office door, the black male tester called Respondents' telephone number and told the person who answered that they were there for a scheduled appointment to see the apartment. The reports indicated that the telephone connection was broken and no one came to show them the unit.

According to the test reports, the white male tester called Respondent Carmelo Luciano on November 23, 2008, and made an appointment to see the apartment for a second time. The report indicated that an appointment was made for 4:00 p.m. on November 24, 2008. According to the test reports, the black male tester also called Respondent Carmelo Luciano and requested another appointment for him and his "wife" (the white female tester) to see the apartment. His report indicated that Respondent Carmelo Luciano told him to be at the apartment within an hour and call him when they arrived there. The report stated that there was no one at the apartment or office when they arrived 45 minutes later. The report also stated that they called Respondent Carmelo Luciano twice from the property, and that their calls were never returned.

In a letter to the Division, Respondents denied that they refused to rent to Complainants because of race. Their letter stated in pertinent part:

[Respondent Carmelo Luciano] also clearly saw that [Complainant Daniels] was Black and yet he accepted a check to hold the apt. for them. He also gave them a paper that we have had for a while to fill

(Porter) is the Executive Director of the Fair Housing Council. The Fair Housing Council and Porter filed a separate, related complaint against Respondents with the Division (Docket number HB31RO-60619).

out with some info. We asked for SS#, copy of license and phone numbers. When they were to come back with the information we needed, a lease was to be signed month-to-month.

During interviews with the Division's investigator, Complainants denied that Respondent Carmelo Luciano gave them a piece of paper or asked them bring additional information with them when they returned on November 16, 2008. Complainant Daniels said Respondent Luciano did ask them for a piece of identification and contact information for their employers on November 10, 2008. Complainant Daniels indicated that in response, he and Complainant Arnone presented Respondent Luciano with their identification and provided the information requested at that time.

The Division's investigator interviewed two of Respondents' tenants at the property. One tenant, who is white, told the Division's investigator that she was able to move into her apartment without providing any personal information. The other tenant, who is also white, said that she never completed an application, but recalled that Respondents asked her only where she worked and the amount of her monthly income.

With respect to whether it is Respondents' practice to require certain information to be provided prior to entering into a lease, the white male tester from the Fair Housing Council indicated that Respondent Carmelo Luciano did not ask him for any information. When this tester asked Respondent Carmelo Luciano what was be required before he could rent the apartment, Respondent Luciano told him only that \$750 to hold the apartment was necessary.

In an interview with the Division's investigator, Respondents said that they could not recall the testers, so they could not provide any information with respect to how the testers were treated. However, they denied that they discriminated against any rental applicants based on race.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

Here, Complainants, an interracial black-white couple, sought to rent an apartment together. The investigation revealed that although Respondent Carmelo Luciano initially told Complainants that they could rent the apartment and accepted a down payment of \$750 on November 10, 2008, he rescinded his offer on November 16, 2008, when Complainants arrived at the property, prepared to move in and to pay the additional \$750 for the rent for the first month.

The investigation also disclosed, through the reports of the Fair Housing Council testers, that after Respondent Carmelo Luciano rescinded his offer to rent the property to Complainants, he continued to show the apartment to others. The testing reports suggest that Respondent was willing to make himself available to potential white renters to show the apartment, but did not keep appointments with potential black renters or their white significant others. The testing conducted by the Fair Housing Council provides support for Complainants' allegation that Respondents' unwillingness to rent to them was based on race.

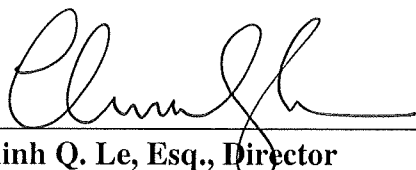
Additionally, Respondents' articulated reason for rescinding its offer to rent to Complainants — that they failed to provide requested information — appears pretextual since the investigation revealed that Respondents requested similar information neither from current white tenants at the time they began their lease, nor from the white tester when he asked Respondent what was necessary to complete the rental process.

In sum, the results of the testing done by the Fair Housing Council are consistent with the the reports of Complainants' experience with Respondent Carmelo Luciano, and are sufficient to establish a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, supra 228 N.J. Super. at 56.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

04/20/2011
Date


Chinh Q. Le, Esq., Director
Division on Civil Rights
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety